IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE SEVENTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE C.V.RAMULU

-

WRIT PETITION NO : 6392 of 2000

Between:

1 G.Narasimham s/o.Sambamurthy,

Retd. Lecturer in English, Central Institute of Commerce,

Lalaguda, Tarnaka, Secunderabad (died)

2 Smt.G.N.Bhavagatamma w/o.late G.Narasimham

Retd. Employee, r/o.1-5-779, Venkatanagar, North Lalaguda,

Secunderabad.

(Petitioner No.2 brought on record as L.R. of the deceased petitioner

as per Court order in W.P.M.P.No.9446/02 dt.6.6.2002)

..... PETITIONERS

AND

1. Government of A.P., Education (Technical Education) Department,

rep. By its Secretary, Secretariat, Hyderabad.

2 The Director of Technical Education, A.P., Hyderabad.

3 The Principal, Central Institute of Commerce,

32, Lalaguda, Tarnaka, Secunderabad.

4 The Secretary, Central Institute of Commerce,

32, Lalaguda, Secunderabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction more in the nature of Mandamus declaring that the petitioner is entitled for pension, gratuity and other retiremental benefits on the basis of service rendered by him in Central Institute of Commerce, Secunderabad on par with other counter parts working in Kamala Nehru Polytechnic, Hyderabad and also Women Polytechnic, Tirupati and other institutions from the day following the date of retirement with all consequential benefits by holding the action of the respondents in not paying the pension, gratuity and other retiremental benefits to the petitioner even though he has been allowed to retire on par with other counter parts at the age of 58 years while paying the same to other counter part Lecturers working in Kamala Nehru Polytechnic, Hyderabad, Women's Polytechnic, Tirupati etc., is as illegal, arbitrary, discriminatory and subversive or Articles 14, 16 and 21 of the Constitution and also opposed to all canons of equity, justice and fair play.

Counsel for the Petitioner: MR.D.LINGA RAO

Counsel for the Respondent Nos.1 and 2: GP FOR HIGHER EDUCATION

Counsel for the Respondent Nos.3 and 4: Mr.J.Ashvini Kumar

The Court made the following:

ORDER:

This writ petition is filed seeking mandamus declaring that the

petitioner is entitled for pension, gratuity and other terminal benefits on the basis of service rendered by him in Central Institute of Commerce, Secunderabad, on par with the staff working in Kamala Nehru Polytechnic, Hyderabad and also Women Polytechnic, Tirupati, who were extended with the benefits under the A.P.Liberalised Pension Rules, 1980 (hereinafter referred to as 'the Pension Rules').

The petitioner, G.Narasimham passed away during the pendency of the writ petition and, therefore, his wife, Smt.G.N.Bhagavatamma has been brought on record as the 2nd petitioner. It seems the first petitioner was originally appointed as Assistant Lecturer in Central Institute of Commerce, Secunderabad, with effect from 27.9.1973. Subsequently promoted as Lecturer with effect from 1.4.1981 and ultimately retired on attaining the age of superannuation on 31.8.1998. Thus, the petitioner had rendered about 25 years of service in the 3rd respondent institute. Therefore, the petitioner is entitled for pension as is being paid to the staff working in Kamala Nehru Polytechnic, Hyderabad and also Women Polytechnic, Tirupati as per the Pension Rules. However, the said benefit was not extended to the petitioner. Though he made several representations, they all went in vain. Hence this writ petition.

A detailed counter affidavit has been filed on behalf of respondents 3 and 4 denying the allegations made by the petitioner. It is asserted in the counter filed by respondents 3 and 4 that the staff working in the 3rd respondent institute is not entitled for pension since the post held by the petitioner was not pensionable job as the A.P. Revised Pension Rules, 1980 and Family Pension Rules as applicable to the State Government employees are not made applicable to the staff working in the 3rd respondent institution. These respondents have no knowledge as to whether pension is paid to the staff of Women Polytechnic at Tirupati, which is said to have been sponsored by T.T.D. In so far as the staff of Kamala Nehru Polytechnic for Women, Hyderabad, is also concerned, pension is not paid. The employees of

Kamala Nehru Women Polytechnic are governed by Employees Provident Fund Pension Scheme and they are paid E.P.F. The 3rd respondent institute is sponsored by the Exhibition Society, which is an aided institution in so far as recurring and non-recurring expenditure to the extent of 50% only and the remaining 50% is to be borne by the Exhibition Society. The employees of the 3rd respondent institution are governed by the Employees Provident Fund Scheme under which the institution contributes 10% of pay and D.A., whereas the employee also contributes equal amount as per law and there is a pension scheme introduced under E.P.F Act. Further after attaining the age of superannuation the petitioner had withdrawn the Provident Fund amount. The members of the contributory Provident Fund are not entitled for any other pension as such the contention of the petitioner that he is discriminated under the Pension Rules is without any substance. However, it is stated that after prolonged correspondence the Commissioner of Technical Education, Andhra Pradesh, Hyderabad, informed the 3rd respondent that its staff are eligible for gratuity as per Section 4(b) of Gratuity Act. Therefore, the petitioner is eligible for gratuity as per rules. However, the petitioner is not entitled for the benefit of pension scheme as is available to the State Government employees or any other Government employees.

Though no counter is filed on behalf of respondents 1 and 2, the learned Government Pleader for Higher Education, when the petitioner brought to the notice of this Court in respect of Kamala Nehru Polytechnic for Women, submits that G.O.Ms.No.210 dated 5.7.1999 was issued by the Government extending the benefit of the Pension Rules without consulting the management, the management itself has filed a writ petition and the said G.O., was set aside. In view of the same, even the plea of the petitioner that the benefits as extended to the staff working in Kamala Nehru Polytechnic for Women are to be extended in this case also does not arise.

Heard the learned counsel on either side and perused the

material available on record. At the outset, I am of the opinion that the writ petition filed by the petitioner is speculative in nature and imaginary. The learned counsel for the petitioner could not trace the right of the petitioner to any of the instructions issued by the Government or any Act governing the service conditions of the petitioner. The only plea of the petitioner was that Pension Rules is being extended to the employees of the Women Polytechnic at Tirupati and Kamala Nehru Polytechnic at Hyderabad, which are run by the Exhibition Society, Hyderabad, and, therefore, the benefit of pension should also be extended to the petitioner. As noticed above, there is no information as to whether the staff working in Women Polytechnic, Tirupati, are getting benefit of the Pension Rules or not. In so far as the Kamala Nehru Polytechnic for Women, Hydeabad is concerned, when the said G.O., was issued saddling the financial burden on the management, therefore the management approached this Court by way of filing a writ petition and the said G.O., was set aside. Whereas in case of the petitioner, neither any G.O., is issued by the Government or the competent authority after considering the case of staff working in the 3rd respondent institution. Therefore, the question of extending the Pension Rules merely on the ground that 50% of recurring and non-recurring expenditure of the 3rd respondent is being met by the Government itself would not confer any right on the petitioner to claim the benefits of the Pension Rules. Thus, the claim of the petitioner is only speculative and imaginary in nature and is not supported by either law or facts. Therefore, the writ petition is devoid of merits.

However, the learned counsel appearing for the petitioner submits that he may be permitted to make a representation before the authorities concerned seeking to consider claim of the petitioner for granting liberalized pension under the Pension Rules. It is always open for the petitioner to approach the concerned authorities and make a representation and if any such representation is made by her, the respondents are at liberty to consider the same according to rules and dispose of the same.

Further, in the counter affidavit filed by respondents 3 and 4 it is stated that since they were not knowing the applicability of the Gratuity Act, the 3rd respondent institution after prolonged correspondence received instructions informing that the staff working in the 3rd respondent institution are eligible for gratuity. Therefore, the petitioner is also eligible for gratuity as per Rules. In this view of the matter, the respondents are directed to release the gratuity amount as per eligibility of the first petitioner (since died) within a period of one month from the date of receipt of this order, in favour of the second petitioner.

With the above observation, the writ petition is disposed of. No order as to costs.

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(C.V.RAMULU, J.)

7.7.2005

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To

1. The Secretary to Government, Education (Technical Education)

Department, Secretariat, Government of Andhra Pradesh, Hyderabad.

2 The Director of Technical Education, A.P., Hyderabad.

3 2 copies to the Govt. Pleader for Higher Education, High Court buildings,

Hyderabad (OUT).

4 The Principal, Central Institute of Commerce,

32, Lalaguda, Tarnaka, Secunderabad.

5 The Secretary, Central Institute of Commerce,

32, Lalaguda, Secunderabad.

6 2 C.D. copies